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**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF ARIZONA**

C.M., on her own behalf and on behalf of her  
minor child, B.M.; L.G., on her own behalf and  
on behalf of her minor child, B.G.; M.R., on her  
own behalf and on behalf of her minor child,  
J.R.; O.A., on her own behalf and on behalf of  
her minor child, L.A.; and V.C., on her own  
behalf and on behalf of her minor child, G.A.,

Plaintiffs,

v.

United States of America,

Defendant.

No. 2:19-cv-05217-SRB

**PLAINTIFFS' OPPOSITION  
TO DEFENDANT'S MOTION  
TO CONSOLIDATE CASES  
FOR COMMON POLICY-  
BASED DISCOVERY ONLY**

No. 2:20-cv-00065-SRB

A.P.F. on his own behalf and on behalf of his  
 minor child, O.B.; J.V.S. on his own behalf and  
 on behalf of his minor child, H.Y.; J.D.G. on his  
 own behalf and on behalf of his minor child,  
 M.G.; H.P.M. on his own behalf and on behalf  
 of his minor child, A.D.; M.C.L. on his own  
 behalf and on behalf of his minor child, A.J.;  
 and R.Z.G. on his own behalf and on behalf of  
 his minor child, B.P.,

Plaintiffs,

v.

United States of America,

Defendant.

Two years into discovery in these cases, and one month before the close of fact discovery, Defendant now moves this Court for an order consolidating this action with *A.I.L.L. v. Sessions*, No. 19-cv-00481-JCH (D. Ariz.), “for the sole purpose of coordinating policy-based discovery common to each case,” but without offering any proposal for how such consolidation would work in practice.<sup>1</sup> *C.M.* ECF 232 at 1; *A.P.F.* ECF 220 at 1. Because consolidation would cause delay, inconvenience, and prejudice to *C.M.* and *A.P.F.* Plaintiffs, Defendant’s motion should be denied.

District courts have “broad discretion whether or not to consolidate actions” under Fed. R. Civ. P. 42(a).” *Allen v. Hylands, Inc.*, 2012 WL 1656750, at \*2 (C.D. Cal. May 2, 2012) (citing *Pierce v. County of Orange*, 526 F.3d 1190, 1203 (9th Cir. 2008)). In determining whether to consolidate actions, “a court weighs the interest in judicial convenience against the potential for delay, confusion, and prejudice caused by consolidation.” *Paxonet Commc’ns, Inc. v. TranSwitch Corp.*, 303 F. Supp. 2d 1027,

<sup>1</sup> Defendant broadly defines “policy-based discovery” as encompassing “the national-level policy-related discovery directed at high level government officials, as well as the implementation of such policies by officials and employees of Border Patrol Sectors, Immigration and Customs Enforcement (ICE) Field Offices, and U.S. Attorney’s Offices.” Motion at 1-2.

1 1028 (N.D. Cal. 2003); *see also Allen*, 2012 WL 1656750, at \*2 (“In determining  
 2 whether consolidation is appropriate, courts weigh ‘the saving of time and effort  
 3 consolidation would produce against any inconvenience, delay, or expense that it would  
 4 cause.’”) (citation omitted). In weighing the benefits of consolidation against any  
 5 prejudice, “[t]he court may consider factors such as disparate trial dates or different  
 6 stages of discovery as weighing against consolidation of the cases.” *Single Chip Sys.*  
 7 *Corp. v. Intermec IP Corp.*, 495 F. Supp. 2d 1052, 1057 (S.D. Cal. 2007); *see also*  
 8 *Parapluie v. Mills*, 2012 WL 13009100, at \*6 (C.D. Cal. Jan. 26, 2012) (“Even if some  
 9 common questions of law or fact are presented, ‘this does not justify consolidation, . . .  
 10 where . . . parties would be prejudiced by [the fact that] the cases are in different phases  
 11 of pre-trial procedures.’”) (citation omitted). Further, where the plaintiffs in one action  
 12 oppose consolidation with another action, “[c]onsolidation is . . . likely to waste just as  
 13 much time as it saves because counsel for the two sets of plaintiffs will need to reach  
 14 consensus on litigation decisions.” *Allen*, 2012 WL 1656750, at \*6.

15 As the party seeking consolidation under Fed. R. Civ. P. 42(a), Defendant bears  
 16 the burden to establish that the requirements for consolidation have been met. *Single*  
 17 *Chip Sys. Corp.*, 495 F. Supp. 2d at 1057. Defendant has failed to meet that burden  
 18 here.

19 Consolidation at this late stage will only serve to delay and complicate discovery  
 20 in these cases. In *C.M.* and *A.P.F.*, Defendant has produced over 78,000 policy-related  
 21 documents;<sup>2</sup> each group of Plaintiffs has served all or nearly all of their allotted  
 22 interrogatories, requests for production, and requests for admission; and *C.M.* and  
 23 *A.P.F.* Plaintiffs jointly have conducted seven policy depositions, with several  
 24 additional joint policy depositions already scheduled; and the deadline for completing  
 25 fact discovery is July 15, 2022. In *A.I.I.L.*, by contrast, no case management order

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 27 <sup>2</sup> This total does not reflect the total number of *unique* documents produced  
 28 given the substantial number of duplicates.

1 setting discovery deadlines has even been issued. *See generally A.I.I.L. v. Sessions*, No.  
2 19-cv-00481-JCH (D. Ariz.). Even if Defendant produced to the *A.I.I.L.* plaintiffs every  
3 document produced in *C.M.* and *A.P.F.* Plaintiffs tomorrow, it would take the *A.I.I.L.*  
4 plaintiffs months—at a minimum—to get up to speed to enable them to meaningfully  
5 participate in the remaining depositions in these cases. Given the different procedural  
6 postures of the cases, consolidation would prejudice *C.M.* and *A.P.F.* Plaintiffs by  
7 significantly delaying this action. At the most recent conference, on June 2, 2022, the  
8 Court stated that it did not want to extend any discovery deadlines. Hr’g Tr. at 16:16-  
9 17:4 (June 2, 2022). Consolidation is thus inappropriate. *See, e.g., Glass v. Intel Corp.*,  
10 2007 WL 2265663, at \*5 (D. Ariz. Aug. 6, 2007) (denying consolidation because it  
11 “may likely lead to unreasonable delay in this action” given the different procedural  
12 postures of the cases); *U.S. Rubber Recycling, Inc. v. Encore Int’l, Inc.*, 2011 WL  
13 311014, at \*13 (C.D. Cal. Jan. 7, 2011) (denying motion to consolidate where  
14 “consolidating the two cases would unduly delay the case at hand” and consolidation  
15 might “unnecessarily compromise[ ]” the schedule); *accord Spurgeon v. Olympic Panel*  
16 *Prods. LLC*, 2008 WL 1805726 (W.D. Wash. Apr. 21, 2008).

17 As a practical matter, consolidation would hinder expeditious and efficient  
18 resolution of Plaintiffs’ claims by requiring *C.M.* and *A.P.F.* Plaintiffs to reach  
19 consensus with the *A.I.I.L.* plaintiffs as to litigation strategy and division of labor. *C.M.*  
20 and *A.P.F.* Plaintiffs already must coordinate with each other to select which policy-  
21 level government officials to depose, what topics and documents to cover, and to split  
22 time questioning such officials. Requiring Plaintiffs to further coordinate with  
23 additional counsel for other plaintiffs—particularly where, as discussed below, there  
24 may be differences in focus or strategy—would be unduly burdensome and result in  
25 further delay. *See Allen*, 2012 WL 1656750, at \*2. Contrary to Defendant’s contention,  
26 consolidation would not in any way “benefit” *C.M.* and *A.P.F.* Plaintiffs. *See Motion*  
27 *at 4.*

1           The absence of any concrete proposal for consolidation in Defendant’s Motion  
2 only increases Plaintiffs’ concerns that consolidation is a delay tactic. The contours of  
3 Defendant’s consolidation proposal are entirely unclear. Defendant’s Motion does not  
4 explain what consolidation would look like where *C.M.* and *A.P.F.* are *two years* ahead  
5 of *A.I.I.L.* in discovery and many policy-level depositions have already taken place.  
6 When Plaintiffs asked Defendant to explain how the proposed consolidation would  
7 affect Plaintiffs in *C.M.* and *A.P.F.*, given the rapidly approaching deadline for fact  
8 discovery in those cases, counsel for Defendant stated that it was “premature” to discuss  
9 such details.

10           Finally, as Defendant acknowledges, there are factual differences among the  
11 cases. *See* Motion at 2 (acknowledging that “the specific factual issues concerning the  
12 Plaintiffs in [*A.I.I.L.*] differ in some respects from those in *C.M.* and *A.P.F.*”); *id.* at 3  
13 (discussing “the noticeable, fact-based differences between the Plaintiffs in [*A.I.I.L.*]  
14 and those in *C.M.* and *A.P.F.*”). For instance, according to Defendant, some of the  
15 *A.I.I.L.* plaintiffs were held in criminal custody—in contrast to the *C.M.* and *A.P.F.*  
16 Plaintiffs who were never held in criminal custody. *See A.I.I.L.*, No. 19-cv-00481-JCH,  
17 ECF 53 at 14-15; Hr’g Tr. at 11:10-12:6 (June 2, 2022) (noting that the *C.M.* and *A.P.F.*  
18 adult plaintiffs were never in criminal custody). Indeed, Defendant previously argued  
19 that, “the factual circumstances of [*A.I.I.L.*] Plaintiffs’ separations are materially  
20 different from the separations in *C.M.* and *A.P.F.*,” including because of “a criminal  
21 history in the arriving [immigrant’s] home country” for one adult plaintiff. *See A.I.I.L.*,  
22 No. 19-cv-00481-JCH, ECF 62 at 2 n.1. Defendant’s assertion that “plaintiffs from  
23 each case will necessarily need to depose the same policy-level federal officials and  
24 obtain the same non-individualized documentary evidence,” Motion at 4, is therefore  
25 inaccurate.<sup>3</sup> Even for common depositions, the factual differences likely would result

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26           <sup>3</sup> To the extent there is overlap in documents and testimony needed, there are  
27 less prejudicial ways to accomplish the efficiency Defendant seeks. For example,  
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1 in plaintiffs in the various cases pursuing differing strategies or lines of questioning  
2 during policy-level depositions. *C.M.* and *A.P.F.* Plaintiffs should not be forced to  
3 carve out time for additional plaintiffs to question policy-level witnesses at this late  
4 stage in the discovery process. And, as a practical matter, trying to schedule depositions  
5 based on the availability of additional counsel is likely to cause delay.

6 Accordingly, Plaintiffs respectfully request that the Court deny Defendant's  
7 Motion.

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Defendant could offer the policy-related documents and deposition transcripts from  
28 the *C.M.* and *A.P.F.* cases to the *A.I.I.L.* plaintiffs.

RESPECTFULLY SUBMITTED this 28th day of June, 2022.

/s/ Diana E. Reiter

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